

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper 88

Filed by: Merits Panel

Box Interference

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Entered

___ March 1999

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

ROLF L. GEERTS, TARA G. HILL,
and SCOTT E. KUFELD,

Junior Party,

v.

FRANZ LANGHAUSER, MARTIN LUX,
ROLF MUELHAUPT, and DAVID FISCHER,

Senior Party.

Patent Interference No. 103,758

Before: McKELVEY, Senior Administrative Patent Judge, and
SCHAFFER and LEE, Administrative Patent Judges.

PER CURIAM.

FINAL DECISION

A. Introduction

The interference is before a merits panel for entry of a final decision.

B. The parties

The interference involves the following parties:

Junior party

Named Inventors: Rolf L. Geerts, Bartlesville, OK
Tara G. Hill, Fairfield, OH
Scott E. Kufeld, Bartlesville, OK

Application: Application 08/373,129,
filed 17 January 1995

Title: Organo-aluminoxxy product and use

Assignee: Phillips Petroleum Company

Accorded Benefit: Application 08/017,207,
filed 12 February 1993,
now U.S. Patent 5,411,925,
issued 2 May 1995

Senior Party

Named inventors: Franz Langhauser, Mutterstadt, Germany
Martin Lux, Dannstadt-Schau, Germany
Rolf Muelhaupt, Freiburg, Germany
David Fischer, Denzlingen, Germany

Patent: U.S. Patent 5,457,171,
issued 10 October 1995,
based on application 08/284,441,
filed 3 August 1994

Title: Catalyst systems for the polymerization
of C₂-C₁₀ alkenes

Assignee: BASF Aktiengesellschaft

Accorded Benefit: Patent Cooperation Treaty application
PCT/EP93/0211, filed 30 January 1993, now

published as WO 93/16116 (19 August 1993)
(Langhauser Exhibit 3).

German patent application P 42 03 753.0,
filed 10 February 1992 (Langhauser
Exhibit 1).

C. The count and the involved claims

Count 1

A catalyst system according to claim 1 of the
Langhauser patent,

or

a process according to claim 5 of the Langhauser
patent,

or

a process according to claim 15 of the Geerts
application,

or

a process according to claim 37 of the Geerts
application.

The claims of the parties are:

Langhauser	1-5
Geerts	9, 15, 27-33, 35-40

The claims of the parties which correspond to count 1
are:

Langhauser	1-5
Geerts	9, 15, 27-33, 35 and 37-40

The claims of the parties which do not correspond to count 1 are:

Langhauser	None
Geerts	36

D. The issues

Geerts has raised several grounds upon which it is entitled to prevail. One of those issues, which we find dispositive since all of Langhauser's claims correspond to the count, is priority of invention. Geerts also maintains that the Langhauser patent claims are unpatentable. On the issue of priority, Geerts presented testimony, evidence and a brief (37 CFR § 1.656). Langhauser did not file a brief in opposition to Geerts' case for priority.

E. Decision on priority and patentability

Upon consideration of the record, including the fact that Langhauser did not file a brief in opposition to Geerts' case of priority, it is

ORDERED, essentially for the reasons given in the BRIEF OF THE PARTY GEERTS ET AL. AT FINAL HEARING (Paper 81), that Geerts has established by a preponderance of the evidence

a case of priority vis-à-vis the 10 February 1992 benefit date accorded to Langhauser.

FURTHER ORDERED that on the record, after consideration of BRIEF OF THE PARTY GEERTS ET AL. AT FINAL HEARING (Paper 81), we find no grounds for holding any of Geerts claims involved in the interference, i.e., Geerts claims 9, 15, 27-33, 35 and 37-40, to be unpatentable.

FURTHER ORDERED that our decision on priority renders it unnecessary to consider other grounds urged by Geerts upon which the claims of Langhauser might be unpatentable.

F. Judgment

Upon consideration of the record, and for the reasons given above, it is

ORDERED that judgment on priority as to Count 1, the sole count in the interference, is awarded against senior party FRANZ LANGHAUSER, MARTIN LUX, ROLF MUELHAUPT, and DAVID FISCHER.

FURTHER ORDERED that judgment on priority as to Count 1 is awarded in favor of junior party ROLF L. GEERTS, TARA G. HILL, and SCOTT E. KUFELD.

FURTHER ORDERED that, on the record before the Board of Patent Appeals and Interferences, junior party ROLF L. GEERTS, TARA G. HILL, and SCOTT E. KUFELD is entitled to a patent containing claims 9, 15, 27-33, 35 and 37-40 (corresponding to Count 1) of application 08/373,129, filed January 17, 1995.

FURTHER ORDERED that senior party FRANZ LANGHAUSER, MARTIN LUX, ROLF MUELHAUPT, and DAVID FISCHER is not entitled to a patent containing claims 1-5 (corresponding to Count 1) of U.S. Patent 5,457,171, issued October 10, 1995, based on application 08/284,441, filed August 3, 1994.

FURTHER ORDERED that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661.

_____)	
FRED E. McKELVEY, Senior)	
Administrative Patent Judge)	
)	
)	
_____)	
RICHARD E. SCHAFER)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
_____)	

JAMESON LEE)
Administrative Patent Judge)

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